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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 DANELLE RENEE SCOGGIN,

12 Plaintiff,

13 v.

14 TURNING POINT CENTRAL
15 CALIFORNIA,

16 Defendant.
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Case No. 1:20-cv-00140-DAD-SAB

ORDER VACATING FINDINGS AND
RECOMMENDATIONS ISSUED MARCH 2,
2020 AND DIRECTING CLERK OF COURT
TO UPDATE ADDRESS ON DOCKET

ORDER GRANTING PLAINTIFF
DANELLE RENEE SCOGGIN'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS

(ECF Nos. 6, 7, 8)

19 On January 28, 2020, Plaintiff Danelle Scoggin ("Plaintiff"), appearing *pro se*, filed the
20 complaint in this action along with an application to proceed *in forma pauperis*. (ECF Nos. 1,
21 2.) On January 31, 2020, the Court denied Plaintiff's application to proceed *in forma pauperis*
22 and ordered Plaintiff to file a long form application to proceed *in forma pauperis* within twenty
23 (20) days of service. (ECF No. 4.) On March 2, 2020, because Plaintiff failed to file such
24 application, the Court issued a findings and recommendations recommending the action be
25 dismissed for failure to comply with the Court's previous order. (ECF No. 6.) Objections to the
26 findings and recommendations were due within thirty (30) days. (Id.) On March 13, 2020,
27 Plaintiff filed objections to the findings and recommendation along with a completed long form
28 application to proceed *in forma pauperis*. (ECF Nos. 7, 8.)

1 The objection states that Plaintiff failed to timely respond to the Court's order because
2 the order was mailed to the incorrect apartment unit. (ECF No. 7.) Plaintiff indicates her correct
3 apartment unit is "P" rather than "B." (Id.) The Court notes that it appears Plaintiff did write the
4 incorrect unit "B" on the first and second page of her filed complaint. (ECF No. 1 at 1-2.) A
5 document from the County of Fresno, and another document filled out by Plaintiff do indicate
6 that her actual unit number is "P" as Plaintiff indicates in the objection. (ECF No. 1 at 25, 40.)
7 Accordingly, the Court shall direct the Clerk of the Court to update the docket to reflect
8 Plaintiff's correct unit number and the Court shall vacate the findings and recommendations
9 based on this fact.

10 The Court now turns to Plaintiff's *in forma pauperis* application. In order to proceed in
11 court without prepayment of the filing fee, Plaintiff must submit an affidavit demonstrating that
12 she "is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The right to
13 proceed without prepayment of fees in a civil case is a privilege and not a right. Rowland v.
14 California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 198 n.2 (1993);
15 Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984) ("permission to proceed *in forma*
16 *pauperis* is itself a matter of privilege and not right; denial of *in forma pauperis* status does not
17 violate the applicant's right to due process"). A plaintiff need not be absolutely destitute to
18 proceed *in forma pauperis* and the application is sufficient if it states that due to his poverty he is
19 unable to pay the costs and still be able to provide himself and his dependents with the
20 necessities of life. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 (1948).
21 Whether to grant or deny an application to proceed without prepayment of fees is an exercise of
22 the district court's discretion. Escobedo v. Applebees, 787 F.3d 1226, 1236 (9th Cir. 2015).

23 In assessing whether a certain income level meets the poverty threshold under Section
24 1915(a)(1), courts look to the federal poverty guidelines developed each year by the Department
25 of Health and Human Services. See, e.g., Paco v. Myers, No. CIV. 13-00701 ACK, 2013 WL
26 6843057 (D. Haw. Dec. 26, 2013); Lint v. City of Boise, No. CV09-72-S-EJL, 2009 WL
27 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein). The 2020 Poverty Guidelines
28 for the 48 contiguous states provides that for a household of two the poverty level is \$17,240.00,

1 \$21,720.00 for a household of three, and \$26,200.00 for a household of four. See U.S.
2 Department of Health and Human Services Poverty Guidelines for 2020,
3 <https://aspe.hhs.gov/poverty-guidelines> (last visited March 19, 2020).

4 The Court has reviewed Plaintiff's long form *in forma pauperis* application. (ECF No.
5 8.) Plaintiff indicates she receives social security disability benefits in the amount of \$948.00
6 per month, and also states such benefits go to her mother. (ECF No. 8 at 1-2.) Plaintiff indicates
7 she receives \$504.00 in food stamps per month. (Id. at 2.) Plaintiff also states she is supposed to
8 receive \$348.00 per month in child support, and although unclear, it appears she contends she
9 has not been receiving it regularly but does so when the other parent is working. (Id. at 1.)
10 Plaintiff also indicates that she has two sons that rely on her for support, aged seven and
11 eighteen. (Id. at 3.) Plaintiff claims no rental or mortgage payments, and lists some expenses
12 relating to food and clothing for her kids. (Id. at 4.)

13 Therefore, taking only the stated income amounts and assuming a full child support
14 payment, Plaintiff has declared annual income of \$21,600.00. Assuming no child support
15 payment, Plaintiff has an annual income of \$17,424.00. Plaintiff indicates she gives her
16 disability benefits to her mother, however it is unclear whether her mother is a part of the
17 household and what income her mother has. Further, it is unclear whether the non-minor son has
18 income. Nonetheless, the Court finds that based on the totality of the facts and circumstances
19 presented, Plaintiff's application demonstrates entitlement to proceed without prepayment of
20 fees. Notwithstanding this order, the Court does not direct that service be undertaken until the
21 Court screens the complaint in due course and issues its screening order.

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Accordingly, IT IS HEREBY ORDERED THAT:

1. The Clerk of the Court is DIRECTED to update the docket to reflect Plaintiff's current address at: 3044 N. Fruit Ave., Apt. P, Fresno CA 93705;
2. The findings and recommendations issued on March 2, 2020 (ECF No. 6) is VACATED; and
3. The Court GRANTS Plaintiff's motion to proceed *in forma pauperis* (ECF No. 8).

IT IS SO ORDERED.

Dated: March 19, 2020


UNITED STATES MAGISTRATE JUDGE